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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ALLEN LEE, on behalf of himself and all others similarly situated,

Plaintiff,

v.

TICKETMASTER L.L.C., a Virginia corporation, LIVE NATION ENTERTAINMENT, INC., a Delaware corporation,

Defendants.

Case Nos. 18-cv-5987-VC

CLASS ACTION

RESPONSE TO DEFENDANTS' STATEMENT OF RECENT DECISION

Place: Courtroom 4

Judge: Hon. Vince Chhabria

On March 13, 2019, defendants filed a "Statement of Recent Decision," Dkt. 41, with a copy of the recent decision in *Dickey v. Ticketmaster LLC, et al.*, 18-cv-9052, Dkt. 33 (C.D. Cal. Mar. 12, 2019) (Wu, J.), granting defendants' motion to compel arbitration.

In their "Statement," the defendants characterize the plaintiff's claims in *Dickey* as "substantially similar to those" in the case at bar.[1] That is incorrect.

The claims of legacy customers like Mr. Allen Lee—who formed a contract with Ticketmaster in 2002, nine years prior to the first whiff of an arbitration clause—are not "substantially similar" to those in *Dickey*. The court in *Dickey* did not address whether those with long-standing Ticketmaster (or TicketExchange) accounts were ever notified of *new* arbitration contract terms imposed in 2011, as required in the Ninth Circuit.[2] Mr. Lee was given no notice.

Yes, Mr. Lee's claim is very different. It turns on notice under contract law. And contract law tells us that the defendants are the least cost avoider, the superior risk bearer, and the repeat player with the "onus" to actually notify legacy consumers like Mr. Lee.[3] Many companies provide notice of new terms; defendants made a business decision not to. So Mr. Lee gets his day in Court.

DATED: March 14, 2019

HAGENS BERMAN SOBOL SHAPIRO LLP

By: */s/ Steve W. Berman*

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[1] Defendants' Statement of Recent Decision, Dkt. 41, at 2.

[2] *See, e.g., Rodman v. Safeway*, 694 F. App'x 612, 613 (9th Cir. 2017) (online merchant cannot "unilaterally amend the Special Terms without notice"); *Nguyen v. Barnes & Noble, Inc.*, 763 F.3d. 1171, 1175-79 (9th Cir. 2014).

[3] *Nguyen*, 763 F.3d. at 1179.

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